

**LFC Requester:****Caroline Malone**

**AGENCY BILL ANALYSIS  
2016 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

**[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)**

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

*Check all that apply:*

**Original**      x   **Amendment**            
**Correction**           **Substitute**          

**Date** Jan. 27, 2016

**Bill No:** SB 216

**Sponsor:** Sen. Craig W. Brandt

**Agency Code:** 305

**Short**    DRIVER'S LICENSE

**Person Writing**    James C. Jacobsen

**Title:**    ISSUANCE & FEDERAL

**Phone:** 222-9085

**Email** jjacobsen@nmag.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB 99, HB 123, HB 144, SB 174.  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

**Synopsis:**

SB 219 would amend NMSA 1978 §66-5-1, *et seq.*, Operators and Chauffeur's Licenses, to conform with the requirements for state issuance of driver's licenses and identification cards set out in the Federal Real ID Act, Public Law 109-13, 119 Stat. 300, and the implementing regulations appearing in 6 CFR Part 37. The Real ID Act defines *driver's license* as a motor vehicle operator's license, as further defined by reference to 49 U.S.C. §30301, "...a license issued by a State authorizing an individual to operate a motor vehicle on public streets, roads, or highways." *Identification card* is defined by reference to 18 U.S.C. § 1028(d), as "...an identification document issued by a State or local government solely for the purpose of identification".

The proposed bill is silent with respect to issuance of driver's licenses and ID cards that do not meet the requirements for acceptance by federal agencies.

The bill establishes expiration dates for driver's licenses issued to foreign nationals that conforms to the Real ID Act requirements for temporary drivers licenses issues to persons without permanent lawful immigration status

The bill also establishes as felonies, rather than misdemeanors: a, the failure to surrender a driver's license or permit which has been suspended, revoked or canceled; or b, knowingly or willfully providing a false or fictitious name or document or making a false statement or otherwise committing a fraud in the application for a driver's license or ID card; and adds c, inducing, soliciting or conspiring with another person to violate provisions of law in the application for an ID card.

The Bill establishes a mechanism for cancellation of driver's licenses or ID cards presently held by persons who have not provided proof of lawful status, and for contesting cancellation.

**FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be

reported in this section.

## **SIGNIFICANT ISSUES**

In the Real ID Act, Congress mandated, as a condition of issuing a driver's license or identification card that States require that the applicant produce:

- A) A photo identity document, except that a nonphoto identity document is acceptable if it includes both the person's full legal name and date of birth;
- (B) Documentation showing the person's date of birth;
- (C) Proof of the person's social security account number or verification that the person is not eligible for a social security account number;
- (D) Documentation showing the person's name and address of principal residence; and
- (E) Valid documentary evidence that the person is:
  - (i) is a citizen or national of the United States;
  - (ii) is an alien lawfully admitted for permanent or temporary residence in the United States;
  - (iii) has conditional permanent resident status in the United States;
  - (iv) has an approved application for asylum in the United States or has entered into the United States in refugee status;
  - (v) has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States;
  - (vi) has a pending application for asylum in the United States;
  - (vii) has a pending or approved application for temporary protected status in the United States;
  - (viii) has approved deferred action status; or
  - (ix) has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States.

Persons with "lawful status" fall into one of these nine categories.

If the applicant presents evidence that the person is present under clauses (E)(v) through (E)(ix), the State may only issue a temporary driver's license or temporary identification card, valid only during the period of the authorized stay in the United States, or if there is no definite end to the period, a one-year period. A temporary license or ID card must clearly state that it is temporary, and set forth the expiration date. If a temporary license or ID card is to be renewed, the applicant must provide valid documentary evidence that the status by which they qualified for the temporary card has been extended by the Secretary of Homeland Security.

SB 219, Section I (C) defines lawful status as "the legal right to be present in the United State, as the phrase is used in federal Real ID Act of 2005". The nine enumerated conditions set forth above are contained in the Real ID Act, but "lawful status" is defined by regulation, 6 CFR 37.3. A reference to the regulation, as may be amended or supplemented, might be appropriate.

SB 219, Sections 3(A) and 10(A), meets most of the content requirements of the Real ID Act for a driver's license or ID card, but does not must contain requirements for physical security features designed to prevent tampering, counterfeiting, or duplication of the document for fraudulent purposes, or a common machine-readable technology, with defined minimum data elements.

The bill is also silent with respect to other administrative requirements related to digital image capture, document retention and security imposed on the Motor Vehicle Division in Section 202(d). To the extent not already addressed elsewhere, they would need to be implemented by statute or regulation.

Section 13(A) provides for due process protections in the cancellation of licenses or ID cards, without specifying the level required. The basic tenet of due process is notice and an opportunity to object, which could be provided at the administrative level contemplated in Section 13. If there is to be a right of appeal to the courts, it would be useful to specify the court and whether any appeal is de novo or on the record.

Section 14(A) provides for adoption of "...general design markings known as gold star pursuant to the Department of Homeland Security REAL ID Securing Plan Guidance Handbook. The Handbook available online at this time, Version 1.0, dated February 2009, does not appear to reference "gold star" markings, instead referring to "Materially Compliant" and "Fully Compliant", and "star" and "star cut out". It would be useful to fully identify the document used as the source, or make the reference to the federal regulation, as it may be amended, modified or supplemented from time to time.

The issuance by New Mexico of driver's licenses to persons without lawful status is an emotional issue for some, and one can imagine that the lack of provision for issuance of driver's licenses and ID cards that do not meet the requirements of the Real ID Act will be characterized as discriminatory or worse. A "driving privilege card" or some similar alternative for persons without lawful status would appear fall within the definition of "driver's license" and thus a distinction without a difference for purposes of the Real ID Act. Act Section 202(d)(11), does provide for driver's licenses or ID cards that do not meet the Act's requirements, but such cards must clearly state that they may not be accepted for any federal identification or purpose, and must use a unique design or color to alert federal agencies or law enforcement personnel that it is not to be accepted. The United State Constitution, Article I, Section 8 gives Congress the power to enact an uniform rule of naturalization; that clause and the Supremacy Clause make it is unlikely that any argument that New Mexico unlawfully discriminates against persons without lawful status by amending its motor vehicle statutes to conform with Congressional requirements would survive a court challenge, at least in the federal court system.

Whether under the State Constitution New Mexico would improperly discriminate between those with legal status and those without by not providing for non-compliant is perhaps a closer call. However, New Mexico would be bound to issue licenses and cards with visually distinct

designs; designs which would have all the indicia regarding lawful status those who argue in favor of no change to present state law fear will encourage improper or illegal discrimination

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

One of at least five bills intended to bring New Mexico into compliance with the Real ID Act.

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

If this bill, or a similar measure is not enacted, New Mexico citizens and residents with lawful status will not be able to use their New Mexico driver's licenses and identification cards for access to federal facilities or to commercial air travel. Other means of identification, such as passports, will be required.

## **AMENDMENTS**

Technical amendments to conform the statutory language to federal law and regulation as set forth above.

Clarification of whether, by what process, and to whom appeals of adverse cancellation decisions may be made.